IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1651 of 2006
TO
FIRST APPEAL No.1658 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAQ OFFICER & ANR. - Appellants
Versus
MAHMED DAWOOD ABHRAM & ORS. - Respondents

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Appearance:
GMR SS PATEL, AGP for Appellants.
MR YN RAVANI for Original Claimants.
None for Acquiring Body.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 19/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.Y.N.Ravani, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Mr.S.S.Patel, learned Assistant Government Pleader appearing for the appellants, states at the Bar that interest of the appellants and that of the respondent No.1 is common and not in conflict at all. Under the circumstances, this Court is of the opinion that it is not necessary for the appellants to effect service of notice of admission of these appeals upon the respondent No.2-acquiring authority. Having regard to the facts of the case, these appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated October 30, 2004 rendered by the learned Civil Judge (S.D.), Bharuch, in Land Reference Case Nos.2902 of 1997 to 2909 of 1997 by which the claimants are awarded total compensation of Rs.40.50 ps. per square metre for their acquired lands.

3. A proposal was received by the State Government to acquire the lands of Village: Rojatankaria for the public purpose of Rojatankaria Minor Canal under the Narmada Project. On consideration of the said proposal, the State Government was satisfied that the lands of Village Rojatankaria were likely to needed for the said public purpose. Thereafter, notification under Section 4 of the Act was issued, which was published in the official gazetted on June 24, 1996. The landowners were served with the notices. They objected to the proposed acquisition. After considering their objections, a report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the Government. The Government after considering the said report, was satisfied that agricultural lands of Village: Rojatankaria specified in notification under Section 4(1) of the Act were needed for the public purpose of Rojatankaria Minor Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in official gazette on December 18, 1996. The claimants were thereafter served with the notices for determination of compensation payable to them. The claimants claimed

compensation at the rate of Rs.50=00 per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by award dated August 5, 1997, offered compensation at the rate of Rs.2/- per square metre. The claimants were of the opinion that the compensation awarded by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, which were registered as Land Reference Case Nos.2902 of 1997 to 2909 of 1997.

4. On behalf of the claimants, witness Mubarak Vali Dawood was examined at Exhibit 51. Though it was claimed by him that each claimant was getting net income of Rs.32,000=00 to Rs.34,000=00 per year from sale of agricultural produces, he could not substantiate the same. However, he relied upon the previous award of the Reference Court relating to the lands of this very village produced at Exhibit 47. The Reference Court has placed reliance on the

decision of the Reference Court, as confirmed by the High Court & the Supreme Court, and awarded the compensation to the claimants at the rate of Rs.40.50 ps. per square metre by judgment and award dated October 30, 2004, giving rise to the instant appeals.

5. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellants, and Mr.Y.N.Ravani, learned counsel for the claimant(s), at length and in great detail. This Court has also considered the documentary as well as oral evidence adduced by the parties before the Reference Court.

6. The fact that the claimants had not claimed the enhanced compensation on yield basis, is not in dispute. What was relied upon by the claimants in support of the enhanced claim was previous award in respect of the lands, which were acquired from this very village, at Exh.47. The lands of Village: Rojatankaria were acquired for the purpose of Oil & Natural Gas Corporation Limited. It indicates notification under Section 4(1) of the Act was published on April 5, 1990 and the Land Acquisition Officer had awarded compensation at the rate of

Rs.3/- per square metre. However, the Reference Court awarded additional compensation at the rate of Rs.22/- per square metre. It may be mentioned that the award of the Reference Court rendered in Land Acquisition Reference No.1924 of 1993 and cognate matters, was subjected to challenge by the Oil & Natural Gas Corporation Limited in First Appeal Nos.3108 to 3121 of 2000. Certified copy of the judgment delivered by the High Court was produced on record of the Reference Court in the instant case at Exh.48. It indicates that the appeals filed by the Oil & Natural Gas Corporation Limited were dismissed by this Court and the award of the Reference Court rendered in Land Acquisition Reference No.1924 of 1993 and other cognate matter was upheld. The record further shows that feeling aggrieved by judgment of the High Court, the Oil & Natural Gas Corporation Limited had approached the Supreme Court by filing Special Leave Petition Nos.7570 to 7578 of 2000 and they were dismissed by order dated August 27, 2001. A copy of the order of the Supreme Court was produced by the claimants on record of the instant case at Exhibit 49. Thus, the previous award of the Reference Court in respect of the lands of this very village was confirmed by the Supreme Court. It is

well settled principle of law that the previous award of the Reference Court relating to the lands of the same village, which has attained the finality, can be relied upon for the purpose of ascertaining the market value of the lands acquired from that very village subsequently. Thus, the Reference Court did not commit any error in placing reliance on Exhibit 47 for the purpose of ascertaining the market value of the lands acquired in the instant case. It may be mentioned that in the present case, notification under Section 4(1) of the Act was published on June 24, 1996 whereas in the previous case, notification under Section 4(1) of the Act was published on April 5, 1990 and in view of time gap of about six years, the Reference Court was justified in awarding Rs.15.50 per square metre as rise in price of the lands acquired. On overall view of the matter, this Court is satisfied that correct principles for determination of market value have been applied by the Reference Court to the proved facts of the case and no case is made out by the learned counsel for the appellants to interfere with the same. Therefore, the appeals, which lack merits deserve to be rejected.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra